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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE 41st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 27 November 1996, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (Hong Kong) (continued) (E/1994/104/Add.10; E/C.12/Q/UKHK.1; E/C.12/Q/HON.1; HRI/CORE/1/Add.62, annex VII; E/C.12/CA.31)

1. At the invitation of the Chairperson, Mr. Steel, Mr. Fung, Mr. Wong, Mr. Croft, Mr. Sherwin, Mr. Shiu, Ms. Chiu, Mr. Reynalds, Sir John Ramsden, Ms. Foulds and Mr. Wells (United Kingdom) took places at the Committee table.

2. The CHAIRPERSON invited the United Kingdom delegation to continue its replies to questions from the previous day.

3. Mr. FUNG (United Kingdom) said that the Equal Opportunities Commission had received 215 general inquiries and 3 formal complaints under the Sex Discrimination Ordinance and Disability Discrimination Ordinance since beginning its work on 20 September 1995. The three cases raised by Mr. Simma would be followed up, but there had been no formal complaints to support the claim that Vietnamese migrants in Hong Kong had been given medical treatment only on condition that they agreed to return to Viet Nam. The Government's policy was that medical services should be provided to all Vietnamese migrants in the camps. Complaints could be made to the camp management or higher authorities. Regarding Mr. Ahmed's query, foreign domestic helpers were treated like any other imported labour under current immigration law. The "two-week rule" was applied equally to all contract workers to give them time to make departure arrangements following the termination of their contracts. Complaints of unfair treatment or abuse could be made to the Labour Department or the police, and the persons concerned were permitted to remain in Hong Kong for the duration of any investigation. Concerning Mrs. Bonoan-Dandan's question, the proceedings in one of the first reported instances in which the Covenant had been invoked in court were reflected in the 1991 Hong Kong public law reports.

4. Mr. GRISSA said that his question on the status of resident and non-resident groups in Hong Kong had not been answered. Would British subjects brought from India or other parts of the Commonwealth to Hong Kong be considered as citizens or would they remain aliens?

5. Mr. SIMMA, Country Rapporteur, requested clarification of recent newspaper reports highlighting the potentially adverse impact of article 23 of the Basic Law and referring to sensitive legislation passed by the Legislative Council. Also, why had the Bill of Rights Ordinance not been amended to restore its original intent, namely to follow the Canadian model, incorporating a third-party effect and making all legislation subject to review on the basis of the Bill of Rights?

6. Mrs. BONOAN-DANDAN, Country Rapporteur, asked what methodology the Hong Kong Government used to carry out its opinion surveys, including the study on sexual orientation.

7. Mr. STEEL (United Kingdom), replying to Mr. Grissa, said that the persons in question would generally not become Chinese citizens, but the acquisition of Chinese citizenship was a matter for Chinese law. Persons who were British by virtue of their connection with Hong Kong, through having been born, naturalized or registered there, and who possessed no other nationality would cease to be British dependent territories citizens at midnight on 30 June 1997. They did, however, have an automatic right to apply for lifelong "British national overseas" status and to receive a British passport under the Hong Kong British Nationality Order, 1986 (as amended in 1993). If any should fail to meet the deadline for the submission of applications, or choose not to apply, they would automatically become British overseas citizens on 1 July 1997, as would their children and, in most cases, their grandchildren at birth, should they otherwise become stateless. No members of the ethnic communities in question would thus find themselves stateless as a result of the transfer of sovereignty.

8. Neither "British national overseas" nor "British overseas citizen" status conferred the right of abode in the United Kingdom, but persons currently British dependent territories citizens by virtue of their connection with Hong Kong, including members of ethnic minorities, who enjoyed the right of abode in Hong Kong only would continue to do so after 1 July 1997 as permanent residents of the Hong Kong Special Administrative Region (section XIV of annex 1 to the Joint Declaration and article 24 of the Basic Law). The Chinese Foreign Minister had assured the United Kingdom Foreign and Commonwealth Secretary that members of ethnic minorities who considered Hong Kong to be their home were guaranteed the right to remain there. Representatives of the ethnic minorities and others had pressed the United Kingdom Government to grant those persons British citizenship, which would accord them the right of abode in the United Kingdom. The United Kingdom Government had not agreed to do so, but had stated that in the unlikely event that a person who was solely a British national ever came under pressure to leave Hong Kong, the Government of the day would consider that person's case for admission to the United Kingdom "with considerable and particular sympathy". In March 1996, the British Prime Minister had given the explicit undertaking that persons finding themselves in such a situation would be guaranteed admission to the United Kingdom.

9. Mr. GRISSA asked whether the right of abode in Hong Kong also included the right to work and other economic, social and cultural rights.

10. Mr. STEEL (United Kingdom) said that the rights of all permanent residents in Hong Kong were guaranteed by the Basic Law, the Bill of Rights and the attraction of the Covenants to the Basic Law. They would belong to Hong Kong and possess British passports, according them the right to travel and to protection abroad. It would be up to China to decide whether to accord them Chinese citizenship.

11. Mr. FUNG (United Kingdom) referred the Committee to article 21 of the Bill of Rights, which defined the rights of "permanent residents" to take part in the conduct of public affairs, vote, be elected and enjoy access to public service. Section 2 of the Immigration Ordinance stated that persons to be accorded the right of abode in Hong Kong must be either Hong Kong British dependent territories citizens, ethnic Chinese who had resided in Hong Kong for a continuous period of not less than seven years, or other persons who enjoyed the status of belonging to Hong Kong before 1986. The ethnic minorities referred to by Mr. Grissa would fall under either the first or third category. Only Hong Kong permanent residents were accorded the right of abode in Hong Kong. According to section 2 (a) of the Immigration Ordinance, that right included the right to own land in Hong Kong and not have conditions of stay, or deportation or removal orders imposed upon them. After 30 June 1997, however, the position of permanent residents would be governed by the Basic Law (art. 24), whereunder the minorities could be permanent residents of the Hong Kong Special Administrative Region.

12. Regarding Mr. Simma's query, the Hong Kong Government had introduced two bills to the Legislative Council - the Official Secrets Bill and the Crimes Amendment Bill, both consistent with article 23 of the Basic Law - to provide a framework for the adaptation of future legislation. Article 23 provided for the Hong Kong Special Administrative Region to enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of State secrets. Following a review of the relevant existing legislation, the Government had put both bills to the Chinese Government for consultation through the Sino-British Joint Liaison Group. The bills covered the offences of treason, secession, sedition, subversion and theft of State secrets, since it had been thought that it would be advantageous to have those offences defined by statute so that a modicum of certainty and predictability could be injected into the legal system. The United Kingdom and Chinese Governments had already agreed in principle to the introduction of the Official Secrets Bill to the Legislative Council, subject to formal ratification at the Joint Liaison Group meeting. The two Governments had not, however, reached an agreement over the Crimes Amendment Bill, despite 17 months of continuous discussion, but that bill had been introduced to the Legislative Council following public concern that clear laws relating to offences under article 23 should be established before sovereignty was transferred. While his Government had made good progress in its discussions with the Chinese Government regarding the Official Secrets Bill, there seemed to be no prospect of reaching agreement with China concerning the Crimes Amendment Bill, even though it was consistent with the Joint Declaration, the Basic Law and Bill of Rights and the International Covenant on Civil and Political Rights. Doors were still open to the Chinese Government should it wish to pursue constructive dialogue before the end of the current legislative session.

13. Mr. GRISSA said that he was still concerned about the situation of ethnic minority groups in Hong Kong after the hand-over to China, particularly in view of a recent report in the Financial Times to the effect that the Chinese Government was contesting six points in the Bill of Rights. He was not satisfied with the replies given by the United Kingdom delegation, whose

Government had a responsibility towards such persons. He would like further clarification regarding the right of abode to which they would be entitled, including the question of the right to work.

14. Mr. STEEL (United Kingdom) said that, under article 24 of the Basic Law, members of ethnic minorities would have the status of permanent residents of the Hong Kong Special Administrative Region. With the exception of Chinese citizenship, they would enjoy the same fundamental rights as other Hong Kong residents, including the right to work, as provided for in article 33 of the Basic Law.

15. Mr. FUNG (United Kingdom) added that article 21 of the Bill of Rights Ordinance contained a definition of what constituted a Hong Kong permanent resident; furthermore, section 2 (a) of the Immigration Ordinance provided additional information on the rights enjoyed by such persons. The question of eligibility for Chinese citizenship was governed by the 1980 Nationality Law of the People's Republic of China, which applied to the Hong Kong Special Administrative Region by virtue of annex III to the Basic Law. Although the majority of the population in China was ethnic Han Chinese, there were 55 legally recognized minorities and Hong Kong permanent residents could avail themselves of the procedure laid down in the 1980 law to apply for Chinese nationality.

16. Regarding Mrs. Bonoan-Dandan's question, the results of the survey carried out on sexual orientation showed that the Hong Kong community had strong reservations about the introduction of legislation, although there was support for public education in that area. Work was therefore under way on such measures and funds were being sought to enhance the services of homosexual support groups. The results of the survey were available in the meeting room; a breakdown of the responses could be provided if necessary.

17. The CHAIRPERSON said that what really interested the Committee was whether the group of people selected for the survey was representative of the population. That information had not been provided.

18. Mr. SIMMA, Country Rapporteur, said that he wondered whether the results of the study could be termed representative of the views of the Hong Kong community when the overwhelming majority of people questioned came from the same religious background and were therefore likely to respond in a similar fashion to the questions asked.

19. The CHAIRPERSON suggested that the United Kingdom delegation might revert to the issue later in the proceedings.

20. Mr. FUNG (United Kingdom), referring to the question of the ambit of the Bill of Rights Ordinance, said that the Bill of Rights was intended to protect individuals against abuse of power by the Government or public bodies. Following a four-year study, which took account of the experience of other common-law jurisdictions, it had been decided that specific laws and other measures afforded a better means of protecting inter-citizen rights and that the application of the broad provisions of the Bill of Rights Ordinance would cause some uncertainty in the private sector and among the general public.

Legislation on privacy and against discrimination on the grounds of sex and disability had already been enacted. Furthermore, studies would be undertaken to assess the need for action in other spheres.

21. Mrs. BONOAN-DANDAN, Country Rapporteur, referring to article 6 of the Covenant, expressed concern regarding the consequences of the delay in the preparation of codes of practice on employment by the Equal Opportunities Commission. She would welcome some explanation in that regard. Furthermore, according to Mr. Fung, the results of a referendum had indicated that the public did not feel the need for legislation against age-based discrimination. How did the Government intend to protect women, who tended to bear the brunt of such discrimination? For in the process of economic restructuring many women over the age of 30 had lost their jobs. They had become the victims of the phenomenon of hidden unemployment, having to revert to their role as housewives, to accept work for lower wages or even to turn to prostitution with their husbands' consent. Was the Government aware of that phenomenon and, if so, what action was it taking to redress the situation?

22. Mr. ADEKUOYE said that it would be useful to have statistics illustrating the unemployment situation, with a breakdown according to sex. He would also welcome information on what kind of further education and training was being provided for the unemployed.

23. Mr. SIMMA, Country Rapporteur, asked why in the draft code of practice drawn up by the Equal Opportunities Commission the principle of equal pay for work of equal value was described in considerably weaker terms than in the relevant piece of legislation. He also sought information on the system of unemployment benefits in Hong Kong.

24. Mr. GRISSA said that, according to a report by the Hong Kong Human Rights Monitor, members of the Indian community were the victims of racial discrimination: they could be dismissed or refused employment and had difficulty in obtaining promotion on racial grounds. It would seem that the right of abode was a privilege that could be withdrawn. As the holders of foreign passports, such persons were classified as aliens and might be asked to leave the country. What would then become of them? The information provided by the United Kingdom delegation thus far had failed to answer that question.

25. Mr. STEEL (United Kingdom) said that there was currently no law dealing with racial discrimination by private employers, for the reasons explained by Mr. Fung. However, there could be no such discrimination by public authorities against public servants since it was expressly forbidden by the Bill of Rights. He referred Mr. Grissa to article 24 of the Basic Law, which specified who was entitled to the right of abode. Although it was conceivable that China might commit breaches of the Joint Declaration and the Basic Law, that was neither the United Kingdom's expectation nor the premise on which the arrangements in question were based.

26. Mr. GRISSA expressed concern about a worst-case scenario in which China would fail to honour its obligations and members of minority groups might have to leave the territory of Hong Kong. Would they be allowed to take up residence in the United Kingdom?

27. Mr. STEEL (United Kingdom) said that his Government had given its assurance that any member of an ethnic minority who was solely a British national and came under pressure to leave Hong Kong, including for reasons of racial discrimination, would be guaranteed admission to the United Kingdom.

28. Mr. ADEKUOYE said the problem was that an assurance by the United Kingdom Government did not amount to a legally enforceable right. What would happen if the Government failed to live up to its word?

29. Mr. STEEL (United Kingdom) said that any State was capable of repudiating its obligations. His Government had, however, given its assurance and if that did not satisfy members of the Committee then they should say so.

30. Mr. FUNG (United Kingdom) said that the codes of practice on employment prepared by the Equal Opportunities Commission had been submitted to the Legislative Council on 20 November for examination. Following their approval, the employment-related provisions in the two pieces of legislation in question, namely the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, would come into force.

31. The matter of unemployment among women over the age of 30 had been looked into in some detail in the light of concerns expressed by Mrs. Bonoan-Dandan during her visit to Hong Kong. The statistics available did not bear out the view that the labour market for women of that age was declining. Those statistics could be provided if required.

32. With regard to Mr. Adekuoye's earlier question about retraining, the Employees' Retraining Board, a statutory body established under the Employees' Retraining Ordinance, existed to help workers aged over 30 to obtain new or upgraded skills in order to find alternative employment. The Board was composed of employers' and employees' representatives, manpower professionals and government officials. There was a retraining fund financed by a capital injection of HK$ 600 million (US$ 75 million) from the Government and by a levy on employers hiring imported labour. The Board offered some 200 courses through 55 training bodies at 129 training centres, within four broad categories: job-search skills, job-specific skills, general skills and skills upgrading. There were full-time, half-day or evening courses and special programmes were run for workers over 50, for disabled people and for victims of industrial accidents. All courses were free of charge, except for some skills-upgrading courses. Full-time trainees received HK$ 4,000 per month to cover travel expenses and earnings forgone. On-the-job training courses were also offered. About 50 courses were provided by 22 training bodies for disabled groups, leading to a job-placement rate of over 65 per cent. The numbers could be found in annex 1 to the written answers, graded according to sex, age group and year.

33. In reply to Mr. Grissa's question on whether minorities employed in the civil service would suffer any disadvantage after June 1997, he drew attention to annex 1, paragraph 72, of the Joint Declaration, which outlined Chinese policy on the matter. It made it clear that not only could public servants continue in their posts, but foreign nationals could be recruited at all levels, except as heads of major government departments. The criteria were to be experience, qualifications and ability. In other words, the system was to

operate as before, except that there would be no privileges for foreign nationals. He also drew attention to article 33 of the Basic Law, which stated that Hong Kong residents had freedom of choice of occupation; that was a further guarantee that minorities in the civil service would be under no disadvantage. As to Mr. Simma's points about weaker language used in the draft code of the Equal Opportunities Commission and about the availability of unemployment benefit, he would have to look into both matters and report back to the Committee.

34. Mr. SIMMA, Country Rapporteur, said that Mrs. Bonoan-Dandan's remarks had been directed at the problem of hidden unemployment. With regard to retraining, one non-governmental organization (NGO) had reported that the Government itself was reluctant to employ retrained workers particularly - if his memory was correct - women.

35. Mrs. BONOAN-DANDAN, Country Rapporteur, referring to the issue of hidden unemployment said that there must be some legitimate cause for concern if all the NGOs that she had met had alluded to the dangers. The issue was not even simply one of unemployment; many women over 30 were being driven into prostitution because the change from manufacturing to services had been so rapid that they were unable to keep pace.

36. The CHAIRPERSON suggested that the delegation could deal with all those points at the 42nd meeting.

37. Mr. SIMMA, Country Rapporteur, turning to article 7 of the Covenant said that he had learnt of some peculiarities of employment in Hong Kong that struck him as positively archaic. For example, an employee could be dismissed at a month's notice, without any reason being given and with no effective recourse. Also, he could hardly credit the fact that there was no minimum wage in Hong Kong. Thirdly, while there was an entitlement to weekly rest hours, they were not paid. Given the Chinese work ethic, a worker would therefore in all probability forgo his rest hours.

38. Mrs. BONOAN-DANDAN, Country Rapporteur, noted two differences between the Sex Discrimination Ordinance and the Disability Discrimination Ordinance: in the case of the former, there was a cap on claims for damages - amounting to HK$ 150,000, she believed - whereas there was no such cap in the case of discrimination on the ground of disability. Furthermore, a person dismissed on the ground of disability could be reinstated, while the same was not true for a person subjected to sexual discrimination. She wondered what other differences of that nature existed between the two Ordinances.

39. Mr. FUNG (United Kingdom) said that there existed legislation against the major forms of unfair dismissal - on grounds such as anti-union discrimination, maternity, employees' absence from work in order to give evidence in legal proceedings and incapacity as a result of work-related injury - as well as the Sex Discrimination and Disability Discrimination Ordinances. The Government also intended to introduce legislation before June 1997 to strengthen the protection of employees against the unreasonable termination of employment or variation of contracts. Mr. Simma was correct in

stating that there was no minimum wage, except for foreign domestic helpers. On the question of weekly rest hours he would make a more detailed response later.

40. Following careful debate, it had indeed been decided that the Sex Discrimination Ordinance would not provide for reinstatement for dismissed people and would contain a cap on claims for damages. The Equal Opportunities Commission could, however, formulate suggestions to amend the Ordinance if it or the Governor considered that necessary. The Government's view was that it should not pre-empt the decisions of the Commission and should give it an opportunity to assess the working of the Ordinance. The Labour Department had, however, drawn up proposals to strengthen the position of dismissed workers, among which reinstatement was recommended as a possible remedy. The Commission would be consulted on the issue. Discrimination was a new area of law for Hong Kong, so the views of all parties had been taken into account, including those of employers, who had pressed for a cap on damages; but the Government was open to suggestions from the Commission.

41. Mr. SIMMA, Country Rapporteur, said that the legislation to which Mr. Fung had referred applied to cases of criminal responsibility on the part of the employer. He had actually had in mind dismissal on arbitrary, or simply unexplained, grounds - an issue far broader than that of sexual discrimination. He wondered what possibilities of financial compensation or reinstatement existed in such cases.

42. Mrs. BONOAN-DANDAN, Country Rapporteur, said that she saw an inconsistency between the Government's stated wish not to pre-empt the decisions of the Equal Opportunity Commission and the proposed labour law which put forward the option of reinstatement. According to her understanding, the intention of the proposed labour law was that reinstatement would be dependent on agreement between the parties concerned, which in all too many cases would be hard to achieve. She would furthermore like some clarification as to the relations between the Government and the Commission. When she had noted that human rights had not been mentioned in pamphlets put out by the Commission, she had been told that it was not part of the Government and had no direct concern with human rights.

43. Mr. FUNG (United Kingdom) said that the Commission was entirely independent of the Government. There was a full-time chairperson and 65 full-time employees who did not form part of the civil service. The Government therefore did not dictate the pace of the Commission's work or the type of policies it pursued. The Government provided support in translating policy into legislation and if a government proposal had an impact on sexual or disability discrimination - as in the case of the proposed labour legislation - it consulted the Commission. Reinstatement was merely one proposal within a study that the Labour Department had carried out on labour relations; if adopted, it would mean that a claim would be dealt with by the labour relations service of the Labour Department through conciliation. If that failed, the issue could be referred at the request of the person concerned to the Labour Tribunal. There the burden would be on the employer to show that he had a valid reason for dismissal. The Tribunal could award compensation on top of the worker's statutory entitlement and could rule in favour of reinstatement if both parties agreed. Before the proposal became

law the Government would consult all parties, including the Commission, and if the proposal was supported a bill would be presented to the Legislative Council in early 1997 to amend the Employment Ordinance to provide protection for employees against unreasonable termination of employment or variation of terms of contract.

44. He could not speak for the Commission on its stance on human rights, but its ambit undoubtedly covered the protection of employees from discrimination on the basis of sex or disability, not only under the relevant ordinances but under any legislation resulting from the new proposals from the Labour Department.

45. Mrs. JIMENEZ BUTRAGUEÑO asked whether the Commission was entitled to take initiatives of its own or to put forward ideas for legislative reform. If so, had it taken any such initiative, and of what nature?

46. Mr. SIMMA, Country Rapporteur, said he was surprised that a mere 200 days before the United Kingdom departed from Hong Kong new laws were planned to provide benefits that in any self-respecting industrial country had been in place for decades. Was that because the colonial power had relied on the workers not asking questions? Naturally, in such a context employers would be against extensions of benefits. They had, after all, opposed the old-age pension.

47. Mr. FUNG (United Kingdom) said, in reply to Mrs. Jiménez Butragueño, that the Equal Opportunities Commission was not a passive body; it was intended to be proactive, though it could also act at the request of the Governor. Initiatives it had taken since September included the two codes of practice it had drawn up, the launch of a publicity programme and the first steps towards setting up channels of communication for liaison with NGOs.

48. Concerning Mr. Simma's comment, the policy of the Hong Kong Government had always been to maintain and improve the status of employees with regard to their conditions of employment, their rights and benefits, including trade union rights, and industrial safety. To do that in a way that was commensurate with the pace of Hong Kong's economic development and with conditions obtaining in neighbouring countries, regular reviews of the labour legislation were carried out and a tripartite Labour Advisory Board, on which employers and employees were equally represented, considered proposals before the Government took action on them.

49. Mrs. JIMENEZ BUTRAGUEÑO inquired whether there had been any cases of child labour in Hong Kong and, if so, what measures the Government was taking to combat the practice.

50. Mr. CEAUSU requested further information on the functioning of the labour inspectorate.

51. Mr. SIMMA, Country Rapporteur, referring to Mr. Fung's statement that the Hong Kong Government had a policy of protecting employees' rights in a way that was commensurate with conditions obtaining in neighbouring countries, pointed out that Taiwan, Singapore, Malaysia and the Republic of Korea had

limitations on working hours and legislation on overtime rates, whereas Hong Kong did not. How, then, could conditions in Hong Kong be said to be commensurate with conditions in neighbouring countries?

52. Mr. FUNG (United Kingdom) replied that there was a general prohibition on child labour. Children under 15 could not be employed in industry, and their employment in other occupations was strictly regulated. In any case, the ILO conventions applied in Hong Kong. He would reply to Mr. Ceausu's question on the Labour Inspectorate and to Mr. Simma's most recent question at a later stage.

53. Mr. SIMMA, Country Rapporteur, referring to article 8 of the Covenant, noted that according to information received from trade unions and other NGOs it was not legally possible for a Hong Kong trade union to join in a confederation with a trade union covering a different industry or trade, and permission from the Governor was required for a trade union to join an international federation. The question arose as to whether with the maintenance of such arrangements, the United Kingdom would not be making it easy after the handover for the Chinese authorities, under article 23 of the Basic Law, to treat Hong Kong trade unions as political - and perhaps subversive - organizations. He also wished to know whether it was true that there was no collective bargaining in Hong Kong, and what remedies were available to persons who were discriminated against because of their trade union activities.

54. Mr. GRISSA said that he had read in the press that the Government of China was having misgivings regarding various aspects of the Basic Law, including the right to form and join trade unions, and it could easily amend the relevant legislation at any time. The situation was unclear because that actor was not involved in the proceedings.

55. Mr. ADEKUOYE asked what remedies were available to a striking worker who was dismissed for striking or whose wages were reduced by the amount due for the time spent on strike?

56. Mr. AHMED said that he wished to draw attention to some of the complaints made by the Hong Kong Confederation of Trade Unions (HKCTU). According to that source, under the current common law practice, contracts were treated as breached when workers resorted to industrial action and employers might even claim damages from workers breaking their contracts. There were no provisions whereby a union could win recognition or conduct collective bargaining with employers, and the existing clause on discrimination against unions did not offer any effective protection against victimization and no redress such as reinstatement for unionists. The legal protection for picketing in industrial action was limited, and there had been numerous cases of picketing workers having been confronted by the police and forced to disperse. Furthermore, many employers obtained injunctions from the courts to remove any obstruction of business.

57. The right to strike was restricted for civil servants by the provisions of article XVI A of the Letter Patent, which had been quoted by the Postmaster General in 1990 to intimidate postal unionists with threats of dismissal in order to deter them from taking industrial action. That had been condemned by

ILO experts following a complaint lodged by HKCTU through the International Confederation of Free Trade Unions. In short, although the right to peaceful picketing was protected by the Trade Union Ordinance, it was very much circumscribed by the Public Order Ordinance, which was notorious for violations of human rights.

58. The current social security system was far from meeting international standards. Many of the ILO conventions on social security ratified by the United Kingdom were applied with modifications or restrictions reserved for Hong Kong only. Two thirds of the workforce were not covered by a private pension scheme and most workers in Hong Kong could not enjoy any form of retirement benefit. Furthermore, the only social protection for older persons, the unemployed and the disabled was the means-tested comprehensive social insurance assistance, which was both inadequate and too restrictive. The end result was a situation that HKCTU described as a disgrace for a wealthy city like Hong Kong.

59. Mr. THAPALIA asked whether decisions taken in respect of trade unions by the executive authorities could be challenged in the courts and requested information on collective bargaining arrangements in Hong Kong and on the number of working hours lost through strikes.

60. Mrs. JIMENEZ BUTRAGUEÑO asked why there were so many violations of ILO Conventions Nos. 87 and 98, concerning freedom of association and collective bargaining, in Hong Kong.

61. Mr. FUNG (United Kingdom) replied that the purpose of the restriction on the right of trade unions to affiliate with overseas organizations was to prevent them from falling under the control of overseas political bodies. However, in practice, no application for overseas affiliation with international organizations had ever been refused, and currently 37 trade unions in Hong Kong had overseas affiliations.

62. The restriction on the formation of trade unions was necessary in order to promote the formation of trade unions and trade union federations which shared common interests and had a genuine concern for their members' welfare. In order to maintain political stability and economic prosperity in the particular circumstances of Hong Kong, it was important to prevent the formation of trade unions or federations which had widely diversified interests or were joined together solely for political purposes. Trade unions were therefore prevented from coming under the control of local or overseas political bodies in a manner detrimental to the development of trade unionism. Workers' associations formed to pursue causes other than workers' welfare were nevertheless free to register as societies. Currently, around 20 associations having members from multiple trades were registered under the Societies Ordinance.

63. Hong Kong had enjoyed harmonious labour relations for a very long time, mainly as a result of its efficient machinery for negotiations between employers and employees. The situation was considered to be consistent with Hong Kong's obligations under ILO Convention No. 98. The Hong Kong Government took the view that collective bargaining could be effective only where a small number of establishments employed a large number of people and where the

majority of employees were trade union members. That was not the case in Hong Kong, where enterprises with less than 20 workers accounted for more than 90 per cent of all establishments and where only 21 per cent of the workforce was unionized. Consequently, compulsory collective bargaining could run counter to the existing right to voluntary direct negotiations and might not be acceptable to non-unionized workers.

64. After 1 July 1997 the ILO conventions would continue to apply to Hong Kong in accordance with the explicit provisions of article 39 of the Basic Law. The questions relating to the remedies available to striking workers and the comments made by HKCTU would be dealt with at the Committee's next meeting.

65. The CHAIRPERSON pointed out that Mr. Thapalia's questions regarding the possibility of defending trade union rights through the courts and the number of working hours lost owing to strikes would also need to be answered.

66. Mr. SIMMA, Country Rapporteur, commenting on the replies just given by Mr. Fung, said that the low rate of membership in trade unions in Hong Kong might be due partly to the low profile which trade unions had as a result of the legal strait-jacket in which they were placed. Moreover, the requirement whereby the Governor's consent must be obtained by a trade union wishing to establish overseas relations might work very well in the current circumstances but, in the light of the information on China's attitude to trade unions which Mr. Grissa had provided, the maintenance of the existing arrangements might lead to the Hong Kong trade unions being handed over to China on a silver platter for total destruction.

67. Mr. CEAUSU noted that after 30 June 1997 implementation of the International Covenants on Human Rights and the ILO conventions would require laws to be promulgated by the Hong Kong Special Administrative Region. Did that mean that, if no laws were promulgated, those instruments would not be applied?

68. Mr. FUNG (United Kingdom) replied that it was a common law principle that international rights and obligations required enabling machinery, usually in the form of statute law, to be justiciable. Various legislative steps had already been taken. In addition, it was important to note that after 1 July 1997 there would be a comprehensive written Constitution or Basic Law, article 39 of which referred to the continuance in force of the two International Covenants on Human Rights and the international labour conventions as applied to Hong Kong. The second paragraph of article 39 specifically provided that there should be no curtailment of the rights protected under them.

69. The figures for the loss of working hours due to strikes in recent years were very low, given Hong Kong's record of peaceful labour relations. In 1993 there had been 10 strikes, in 1994 there had been 3, and in 1995 there had been 9. The number of working days lost per 1,000 employees had been 6.37 in 1993, 0.13 in 1994 and 0.37 in 1995.

70. As far as the remedies available to striking workers were concerned, it should be borne in mind that employees had complete freedom to strike. The Trade Union Ordinance granted immunity from criminal liability for conspiracy to strike and immunity from certain civil liabilities to trade unions in respect of acts performed in furtherance of a trade union dispute. The Employment Ordinance also provided protection for employees against discrimination in respect of trade union membership and activity. Furthermore, the Bill of Rights reinforced that position in its article 18, which guaranteed the right to freedom of association, including specifically the right to form and join trade unions.

71. In a recent development further to strengthen security of employment, the Government had made proposals to enable an employee who had been dismissed for trade union membership or activity to make a claim for compensation against his employer, to be judged by an independent tribunal which would be empowered to make an order for reinstatement or an award for compensation in addition to the employee's statutory entitlement. The proposals had already been endorsed by the Labour Advisory Board, and the legislative process to give effect to them had been initiated.

The meeting rose at 1 p.m.